

**SYNOPSIS**

**PURCHASERS' USE TAX -- BURDEN OF PROOF MET IN PART --** At hearing the administrative law judge may allow the parties to stipulate and/or concede certain legal issues, thereby resulting in a revised assessment.

**FINAL DECISION**

The Director of the Field Auditing Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner.

This assessment was for the period of July 1, 2000 through June 30, 2003, for tax, interest through July 31, 2003, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked August 20, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

In conjunction with the filing of its petition for reassessment, Petitioner remitted a portion of the purchasers' use tax assessed .

Subsequently, written notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

**FINDINGS OF FACT**

At the hearing, Petitioner and Commissioner's counsel agreed that seventeen (17) invoices should be deleted from the assessment.

## **DISCUSSION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In this case, the parties conceded at the hearing that the assessment should be affirmed in part because a portion of the contested items was indeed taxable, while another portion was not. In due course, both sides reviewed the recomputation of tax and have agreed that the same is due and owing.

## **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether certain of the payments were exempt from tax.

## **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of July 1, 2000 through June 30, 2003, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law to reflect a refund due the Petitioner.

The West Virginia State Tax Commissioner's Office is to commence forthwith the process for payment of the refund, plus any statutory interest.